

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

**Telecommunications Division
Carrier Branch ***

**RESOLUTION T-16596
December 11, 2001**

R E S O L U T I O N

RESOLUTION T-16596. PACIFIC BELL (U-1001-C). REQUEST TO PROVIDE ANONYMOUS CALL REJECTION (ACR) SERVICE PERMANENTLY.

BY ADVICE LETTER NO. 21423, FILED OCTOBER 12, 2000.

SUMMARY

This resolution grants Pacific Bell's (Pacific) request in AL No. 21423 (filed on October 12, 2000) to permanently offer Anonymous Call Rejection (ACR) service, which allows a subscriber to reject calls from parties whose telephone numbers have been blocked. However, Pacific's request to discontinue filing its quarterly tracking report on ACR service complaints to the Director of the Telecommunications Division (TD) is denied.

BACKGROUND

Public Utilities (PU) Code Section 2893 contains rules for the offering of telephone call identification services. The statute requires that customers be notified 30 or more days before the service commences and that they be allowed to withhold display of their telephone numbers from the telephone instrument of the called party.

In Decision (D.) 92-06-065, the Commission authorized Pacific, GTE California, Inc., and Contel of California, Inc. to offer Custom Local Area Signaling Services (CLASS), which include Call Block, Call Return, Call Trace, Caller ID, Priority Ringing, Repeat Dialing, and Select Call Forwarding. The decision also granted these companies permission to offer ACR service, subject to an AL filing. Additionally, in D.92-11-062 (issued in response to appeals of certain aspects of D.92-06-065) the Commission reaffirmed its approval of ACR service.

D.92-06-065 also established consumer safeguards, as well as policies and guidelines for offering of all privacy-related CLASS services, including Caller ID and ACR services. Because of Caller ID and/or ACR service privacy implications, these safeguards include options that afford a caller the ability to keep their telephone numbers from being transmitted to parties who subscribed to ACR service and/or Caller ID service. One option is Complete Blocking (maximum privacy protection), where Pacific automatically prevents the caller's name and/or number from being transmitted to the called party. However, a caller can still choose to transmit their name and/or number on a selected call by pressing *82 (1182 on rotary telephones) before dialing the number. Another option is Selective Blocking (minimum privacy protection), where a caller's name and/or number will be automatically shown unless the caller blocks it by pressing *67 prior to dialing the number. However, it is noted that a caller's name and/or number cannot be blocked to calls made to 9-1-1, and certain numbers with area codes, such as, but not limited to, 800, 877, 888, and 900.

In Resolution T-16148, dated June 18, 1998, Pacific was granted authority to offer ACR service on a provisional basis for two years, subject to certain conditions. In order to insure that all sources of Pacific's educational information on ACR service for the public were neutral, factual and consistent, the Commission required the company to submit draft materials for review, including: (a) a bill insert; (b) an ACR service recording; (c) script for Pacific's 1-800 Customer Guide, which shall not require a code to access it; (d) information on ACR service in the white page directories; and (e) service representative scripts and aids for use when subscribers call Pacific with questions about ACR service. In addition, Pacific was also required to notify customers by bill inserts at least 30 days before offering ACR service, and that foreign language translations of its bill inserts were to be made available. Finally, Pacific was ordered to track and report, on a quarterly basis, to the Director of the TD, all inquiries received, including, but not limited to, complaints, comments, number of ACR service subscribers, and the number of rejected calls made each month. Pacific has complied with each of these requirements.

On September 1, 2000, Pacific requested, and was granted, authority to extend the provisional status of ACR service through November 20, 2000, or until such time the Commission acts on Pacific's AL request to offer ACR service on a permanent basis. Pacific also asked that the Commission allow the company to discontinue its quarterly reporting of ACR service complaints to the Director of TD.

On October 12, 2000, Pacific filed AL No. 21423, seeking Commission authority to offer ACR service on a permanent basis. Pacific indicates that ACR service should be given permanent status because (a) ACR service is useful to a large number of subscribers; (b) ACR service no longer generates a high number of complaints; and (c) ACR service has had no negative impacts on Pacific's network.

NOTICE/PROTESTS

Pacific states that a copy of AL No. 21423 was mailed to competing and adjacent utilities and/or other utilities. Notice of this AL was published in the Commission Daily Calendar of October 18, 2000. No protests to this AL have been received.

TD's draft resolution in this matter was mailed on October 5, 2001, and comments by Pacific were timely filed on October 19, 2001.

DISCUSSION

ACR service allows a subscriber to reject calls from calling parties who have chosen to block the display of their telephone numbers. These calls are routed to a recording, which explains why the party's call was not completed and also provides options for the calling party to reach the party subscribing to ACR service.

Pacific advises TD that the penetration rate on ACR service has increased from 2.0% in March 1999 to 4.9% in March 2001 because it provides subscribers a cost-effective way to screen unwanted calls. When ACR service was first deployed, there were some concerns that the service would negatively impact Pacific's network. However, according to Pacific, since its launch, ACR service has had no negative impact on the company's network and Pacific has only blocked 0.0004% of all attempted calls (approximately 5 to 6 trillion calls).

Since ACR service subscribers have continued to grow without any negative impact on Pacific's network, TD believes that it is reasonable to grant Pacific's request to offer ACR service on a permanent basis. However, Pacific's request to discontinue its quarterly tracking report on ACR service complaints to the Director of TD should be denied.

In D.01-09-058, the Commission found that: (1) Pacific had reverted to deceptive marketing practices by only informing customers of the most expensive telephone service option and failing to disclose less expensive alternatives; and (2) Pacific violated Commission decisions requiring full disclosure of the privacy consequences of changing Caller ID blocking options. As a result, Pacific was fined a significant amount of monies for violations of these marketing and Caller ID regulations.

Given the history of Pacific's marketing practices, TD has some reservations in approving Pacific's request to discontinue its ACR service complaint tracking report. Therefore, to alleviate these concerns, TD recommends that Pacific be ordered to continue to track and report its ACR service complaints to the Director of TD for an

additional year on a semi-annual basis. The first and second reports are due no later than July 31, 2002 (for the period January 1, 2002 through June 30, 2002) and January 31, 2003 (for the period July 1, 2002 through December 31, 2002), respectively. These reports are expected to help verify Pacific's adherence to the recommended conditions that follow.

To safeguard consumers from the privacy implications of ACR service, TD recommends that the Commission require Pacific to adhere to the following conditions:

- (a) continue to offer ACR service at an undiscounted rate to non-Caller ID subscribers or as an optional free add-on service to Caller ID subscribers only;
- (b) not offer or promote ACR service for free or at a discounted rate with any other local exchange services;
- (c) when customers with complete blocking inquire about ACR service, Pacific should advise them that: (1) they are not required to switch from the complete blocking option to selective blocking; and (2) their calls can be connected to an ACR subscriber without revealing their identity by having the operator make the calls for them or by using a public pay telephone;
- (d) not attempt to migrate or encourage the migration of prospective ACR service subscribers, who currently have complete blocking, to the selective blocking option without their written consent and full knowledge of the privacy consequences of both blocking options; and
- (e) include the privacy implications of ACR service in its annual notices, which contain detailed information on Pacific's telephone services.

The draft resolution of the TD in this matter was mailed to the parties in accordance with PU Code Section 311(g)(1). Comments were filed on October 19, 2001 by Pacific.

PACIFIC'S COMMENTS

With the exception of Condition (e), Pacific disagrees with all the conditions set forth above. Pacific's comments are summarized as follows:

Condition (a) is an inappropriate and illegal restriction on Pacific's authority for Category II pricing flexibility indicated in D.94-09-065.

Condition (b) violates D.96-03-020, which allows bundles of services as long as the promotional price for the bundled services is above the total price floors for the services, and Resolution T-15613 that authorizes Pacific to offer services for promotions.

Condition (c)(1) does not affect the existing blocking on the line, and discussion of this issue in the context of ACR may lead to customer confusion. In addition, Condition (c)(2) is currently being practiced by Pacific so it is unnecessary to order Pacific to explain this to customers. Therefore, this condition should be deleted.

Condition (d) creates a new requirement that would broadly apply to Pacific's communications with any of its existing customers who have complete blocking and do not necessarily purchase ACR service. Further, the Commission's rules on blocking are not part of the ACR. They were established as part of Pacific's Caller ID service, which do not require written consent and they conflict with the blocking requirements in D.01-09-058. Pacific further states that adoption of this condition would constitute a gross violation of due process rights because it was its first time to learn of this requirement when it received the draft resolution. Accordingly, this condition would also be an unlawful limitation of Pacific's right to engage in lawful commercial speech protected by the First Amendment to the U.S. Constitution.

Pacific claims that it had already fulfilled the additional year tracking requirement imposed by the proposed resolution when Pacific complied with TD's request to extend its tracking report until further notice. Also, Pacific states that TD's reservation about discontinuing the tracking requirement in light of D.01-09-058 does not warrant this requirement because (1) D.01-09-058 supports ACR service offering; (2) Pacific met the requirements set forth in Section 2893 of the PU Code; and (3) Greenlining's allegation that ACR violates customer's privacy indicated in D.01-09-058 was rejected by the Commission. Furthermore, Pacific states that continued tracking serves no purpose since ACR service has matured with few complaints in the last couple of years and is not causing any network problems.

RESPONSE TO PACIFIC'S COMMENTS

Conditions (a) and (b)

Upon further review of D.94-09-065 and D.96-03-020 (decisions that allow pricing flexibility on certain telecommunications services offered by certain telephone companies) and Resolution T-15613 (resolution that authorizes Pacific to offer promotions on certain services), we agree with Pacific that ACR service is a Category II service and that a price floor and ceiling have been established with the Commission. Therefore, Pacific will not be restricted from promoting and flexibly pricing ACR

service. However, Pacific must ensure that the promotional price for ACR service is above its stand-alone cost, or price for the bundled service (which includes ACR service) is above the total price floors for the bundled services. Further, Pacific should not market ACR service in a way that it would be burdensome for customers to keep their complete blocking option.

Condition (c)

In D.01-09-058, we found that Pacific's marketing scripts were deficient in providing important information about complete blocking which would allow a customer to unblock the display of telephone number on a per call basis to avoid call rejection from customers who have ACR service. In contrast, Pacific provided information to customers with selective blocking that they could block the display of their telephone number on a per-call basis. Thus, Pacific's marketing scripts were not only biased, but also unbalanced and incomplete because more information is offered to switch customers from complete to selective blocking. In addition, a customer's decision to switch from complete blocking to selective blocking did not constitute a fully informed waiver of a customer's privacy rights. As a result, we found that Pacific had violated PU Code Section 2896 and D.92-09-065, and we ordered Pacific, among other things, to switch customers from selective blocking back to complete blocking, if they wish, without any charge to the customer.

We believe that the usefulness of both ACR and Caller ID services will be diminished when customers with complete blocking do not unblock their telephone numbers or do not use other options of using the operator or public pay telephone to complete the call. Thus, fewer calls can be connected to ACR subscribers. Consequently, Pacific would encourage customers to switch to selective blocking because more calls can be connected to subscribers of ACR and Caller ID services. Our goals are to (1) maintain balance on the calling and called parties' privacy interests; (2) ensure that prospective ACR service customers with complete blocking understand that it is unnecessary for them to switch to selective blocking if they wish to subscribe to privacy-related custom calling services (i.e., ACR and Caller ID services); and (3) deter Pacific from providing biased information on the blocking options.

It is important that prospective ACR subscribers with complete blocking are fully informed that there are two options other than selective blocking to connect with an ACR subscriber as mentioned in Condition (c). Therefore, Pacific is required to inform prospective ACR subscribers that (1) they do not have to switch to selective blocking if they have complete blocking to subscribe to ACR service; and (2) calls made by customers with complete blocking can be connected to an ACR subscriber without revealing their identity by (a) using an operator to connect the call for them, or (b) using a public pay phone.

Condition (d)

We have considered Pacific's position that the written consent requirement imposed on Pacific conflicts with D.01-09-058, which only requires a full disclosure of the two blocking options in customers' bills. Since the confirmation letter sent to ACR subscribers already includes a concise description of the complete and selective blocking options as well as the procedure on how to unblock or block the caller's number, we will not impose the written consent requirement on Pacific.

We disagree with Pacific's comment that it was not given due process rights regarding the imposition of Condition (d). Pursuant to PU Code Section 311(g)(1), decisions or resolutions shall be served on parties and subject to public review and comment. The purpose of serving or mailing TD's draft Resolution T-16596 to Pacific prior to it being considered for a vote by the Commission is to provide Pacific an opportunity to comment on the resolution. Therefore, we believe that Pacific's due process rights were not violated because the requirement set forth in PU Code Section 311(g)(1) has been satisfied.

Since Pacific will be given authority to offer ACR service on a permanent basis, the only way for the Commission to monitor its compliance with the conditions imposed by this resolution is through continued tracking of ACR service complaints. Although the Commission supported ACR in D.01-09-058, the decision does not restrict nor prohibit the Commission from requiring Pacific to track and report ACR service complaints to the Director of TD. Therefore, our position on this matter remains unchanged. Pacific will be required to continue to track and report to the Director of TD its ACR service complaints for an additional year on a semi-annual basis. The first and second reports are due no later than July 31, 2002 (for the period January 1, 2002 through June 30, 2002) and January 31, 2003 (for the period July 1, 2002 through December 31, 2002), respectively.

In light of the above discussion, we find the TD's recommendations to be appropriate and reasonable.

Commission approval is based on the specifics of the AL and does not establish precedent for the contents of future filings or for Commission approval of similar requests.

FINDINGS

1. Commission D.92-06-065 authorized Pacific, GTE California, Inc., and Contel of California to offer CLASS, including Caller ID and ACR services.
2. Commission D.92-06-065 established consumer safeguards, which afford customers the ability to block their telephone numbers: (1) Complete Blocking (maximum privacy protection), where a caller's name and/or number is automatically prevented from being transmitted to parties who subscribe to ACR service and/or Caller ID service; and (2) Selective Blocking, where a caller's name and/or number will be automatically shown unless the caller blocks it by pressing *67 prior to dialing the number.
3. Commission D.92-11-062, issued in response to appeals of certain aspects of D.92-06-065, reaffirmed the Commission's approval of ACR service.
4. Resolution T-16148, dated June 18, 1998, granted Pacific the authority to offer ACR service on a provisional basis for two years.
5. On September 1, 2000, Pacific requested, and was granted, authority to extend the provisional status of ACR service through November 20, 2000, or until such time the Commission acts on Pacific's AL request to offer ACR service on a permanent basis.
6. On October 12, 2000, Pacific filed AL No. 21423, seeking Commission authority to offer ACR service on a permanent basis.
7. Pacific's request in AL No. 21423 to offer ACR service on a permanent basis is reasonable and should be approved.
8. In D.01-09-058, the Commission found that: (1) Pacific had reverted to deceptive marketing practices by only informing customers of the most expensive telephone service option and failing to disclose less expensive alternatives; and (2) Pacific violated Commission decisions requiring full disclosure of the privacy consequences of changing Caller ID blocking options.
9. In D.01-09-058, Pacific was fined a significant amount of monies for violations of marketing and Caller ID regulations.
10. Pacific's request to discontinue its tracking report on ACR service complaints to the Director of TD should be denied.

11. ACR service has had no negative impact on Pacific's network.
12. Analysis of D.94-09-065, D.96-03-020, and Resolution T-15613 indicates that Pacific's ACR service is a Category II service and that Pacific has a Commission- approved price floor and ceiling to exercise pricing flexibility.
13. Pacific should not be restricted from promoting and flexibly pricing ACR service provided that its stand-alone cost, or price for the bundled service (which includes ACR service) is above the total price floors for the bundled services.
14. Pacific should not market ACR service in a way that it would be burdensome for customers to keep their complete blocking option.
15. In order to maintain balance on the calling and called parties' privacy interests; ensure that prospective ACR service customers with complete blocking understand that it is unnecessary for them to switch to selective blocking if they wish to subscribe to privacy-related custom calling services (i.e., ACR and Caller ID services); and deter Pacific from providing biased information on the blocking options, Pacific should be ordered to inform prospective ACR subscribers that (1) they do not have to switch to selective blocking if they have complete blocking to subscribe to ACR service; and (2) calls made by customers with complete blocking can be connected to an ACR subscriber without revealing their identity by (a) using an operator to connect the call for them, or (b) using a public pay telephone.
16. Pacific should continue to include the privacy implications of ACR service in its annual notices, which contain detailed information on Pacific's telephone services.

17. The only way for the Commission to monitor Pacific's compliance with the requirements set forth in this resolution is through continued tracking of ACR service complaints. Therefore, Pacific should be ordered to continue to track and report its ACR service complaints to the Director of TD for an additional year on a semi-annual basis. The first and second reports are due no later than July 31, 2002 (for the period January 1, 2002 through June 30, 2002) and January 31, 2003 (for the period July 1, 2002 through December 31, 2002), respectively.

THEREFORE, IT IS ORDERED that:

1. Pacific's request in AL No. 21423 to offer ACR service on a permanent basis is approved.
2. Pacific's request to discontinue its tracking report on ACR service complaints to the Director of TD is denied.
3. Pacific shall not be restricted from promoting and flexibly pricing ACR service provided that its stand-alone cost, or price for the bundled service (which includes ACR service) is above the total price floors for the bundled services.
4. Pacific shall not market ACR service in a way that it would be burdensome for customers to keep their complete blocking option.
5. In order to maintain balance on the calling and called parties' privacy interests; ensure that prospective ACR service customers with complete blocking understand that it is unnecessary for them to switch to selective blocking if they wish to subscribe to privacy-related custom calling services (i.e., ACR and Caller ID services); and deter Pacific from providing biased information on the blocking options, Pacific shall inform prospective ACR subscribers that (1) they do not have to switch to selective blocking if they have complete blocking to subscribe to ACR service; and (2) calls made by customers with complete blocking can be connected to an ACR subscriber without revealing their identity by (a) using an operator to connect the call for them, or (b) using a public pay telephone.
6. Pacific shall continue to include the privacy implications of ACR service in its annual notices, which contain detailed information on Pacific's telephone services.
7. Pacific shall continue to track and report its ACR service complaints to the Director of TD for an additional year on a semi-annual basis. The first and second reports are due no later than July 31, 2002 (for the period January 1, 2002 through June 30,

2002) and January 31, 2003 (for the period July 1, 2002 through December 31, 2002), respectively.

This Resolution is effective today.

I hereby certify that the Public Utilities Commission at its regular meeting on December 11, 2001 adopted this Resolution. The following Commissioners approved it:

/s/ WESLEY M. FRANKLIN

WESLEY M. FRANKLIN
Executive Director

LORETTA M. LYNCH
President
HENRY M. DUQUE
RICHARD A. BILAS
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners